

DESCRIPTION OF TRANSACTION AND PUBLIC INTEREST STATEMENT

With this application,¹ the applicants described below seek consent to implement a like-kind exchange of PCS licenses. Specifically, VoiceStream PCS BTA I License Corporation (“VS PCS”) and VoiceStream GSM II, LLC (“VS II” and, with VS PCS, the “VoiceStream Parties”) and Cellco Partnership d/b/a Verizon Wireless (“Cellco”) (collectively, the “Parties”) seek Commission consent to disaggregate (in the case of the Cellco license) and exchange the following PCS licenses:

I. Full assignments from the VoiceStream Parties to Cellco:

Call Sign	Licensee/ Assignor	Assignee	Underlying Market	Channel Block
KNLF967	VS II	Cellco	Des Moines, IA BTA111	F
WPUD913	VS PCS	Cellco	Myrtle Beach, SC BTA312	C
KNLH414	VS PCS	Cellco	Nashville, TN BTA314	D

II. Disaggregation/partial assignment followed by full assignment of remainder of license from Cellco to the VoiceStream Parties:

Call Sign	Licensee/ Assignor	Assignee	Underlying Market	Channel Block	Frequencies Being Disaggregated/ Assigned (MHz)
KNLH446	Cellco	VS PCS	Baltimore, MD BTA029	E	1885-1888.5 MHz; 1965-1968.5 MHz
KNLH446	Cellco	VS II	Baltimore, MD BTA029	E	1888.5-1890 MHz; 1968.5-1970 MHz

Thus, the VoiceStream Parties will assign KNLF967, WPUD913 and KNLH414 to Cellco as indicated above. In exchange therefor, Cellco will disaggregate and assign 3 MHz of KNLH446 to VS II and assign the remaining 7 MHz of KNLH446 to VS PCS as indicated above.

For the reasons set forth below, the Parties submit that Commission approval of the proposed transaction is consistent with the public interest, convenience and necessity.

¹ The Parties have utilized four discrete applications in order to reflect and facilitate the series of transactions that the Parties have contemplated.

Description of the Parties

VoiceStream Parties

VoiceStream PCS BTA I License Corporation and VoiceStream GSM II, LLC are indirect, wholly-owned subsidiaries of T-Mobile USA, Inc. ("T-Mobile"). The qualifications of T-Mobile's subsidiaries to hold PCS licenses are a matter of public record, established and approved in numerous Commission decisions granting them numerous PCS licenses based on findings that they are fully qualified to be a licensee.² Detailed information as to T-Mobile's ownership is provided in its Form 602, which is on file with the Commission.

Verizon Wireless Parties

Cellco is a general partnership, which is ultimately owned by Verizon Communications Inc. ("Verizon Communications") and Vodafone Group Plc. ("Vodafone"). Cellco's qualifications to hold cellular and PCS licenses are a matter of public record, established and approved in numerous Commission decisions granting it numerous cellular and PCS licenses based on findings that it is fully qualified to be a licensee.³ Detailed information as to Cellco's ownership is provided in its Form 602, which is on file with the Commission.

Description of the Transaction

In order to expand and improve their respective service offerings, the Parties have determined that it would be mutually beneficial to exchange a number of PCS market areas and frequency bands. In two cases (Nashville, TN and Des Moines, IA) the VoiceStream Parties will retain other licenses. In one case (Myrtle Beach, SC) the VoiceStream Parties will assign its only license. The VoiceStream Parties will have cleared all of their operations on and uses of that spectrum by closing. Cellco will use the spectrum in the subject markets to provide additional voice capacity and expand its broadband EVDO service. In Baltimore, MD Cellco

² See, e.g., FCC Public Notice, *Wireless Telecommunications Bureau Grants Consent to Transfer Control of C and F Block Broadband PCS Licenses*, 18 FCC Rcd 5089 (WTB 2003).

³ See, e.g., FCC Public Notice, *Wireless Telecommunications Bureau and International Bureau Grant Consent for Assignment or Transfer of Control of Wireless Licenses and Authorizations from Price Communications Corporation to Cellco Partnership d/b/a Verizon Wireless*, 16 FCC Rcd 7155 (WTB 2001).

retain other licenses. The VoiceStream Parties will use that spectrum to provide additional voice capacity and expand broadband GPRS service. The Parties intend to consummate the subject transactions promptly following FCC consent and the satisfaction of certain contractual conditions.

Public Interest Statement

Commission approval of this application will serve the public interest. The assignments proposed herein between the Parties will not result in any violation of the Communications Act of 1934, as amended (the "Act"), or any other applicable statutory provision. There are no related microwave stations or international authorizations being assigned. There are no application filing fees associated with these applications because they involve only the assignment of Broadband PCS licenses. Moreover, the assignments fully comply with all Commission rules and regulations and require no waivers. Therefore, they do not frustrate or impair the Commission's implementation and enforcement of the Act or other statutes. Finally, the Commission initially licensed the subject authorizations more than three years ago. Therefore, the Parties are not subject to the reporting requirements set forth in Section 1.2111(a). Two of the licenses being assigned, WPUD913 and KNLF967, include C and F block PCS spectrum and were originally licensed under the designated entity program. However, Commission approval of this application would not result in any unjust enrichment concerns.⁴ The remaining balances of the winning bid amounts for WPUD913, KNLH414, KNLH446 and KNLF967 have already been paid in accordance with Part 1 of the Commission's rules. Accordingly, the Parties request that the "Special Conditions" placed on WPUD913, KNLH414, KNLH446 and KNLF967 relevant to unjust enrichment and/or payment of winning bid amounts be removed.

The transaction will promote the public interest by enabling each of the Parties to enhance its existing service offerings in the relevant markets. Specifically, the increase in spectrum in markets where current holdings are limited and the optimization of spectral alignment will allow each Party to improve the services available to the public, to enhance its ability to handle more customers and to provide services that require more spectrum, and, overall, to achieve greater efficiencies in the administration and use of its spectrum. Specifically, the transaction will promote the public interest by (i) enabling Cellco to enhance its existing voice service in the relevant markets; to expand its licensed service area to include

⁴ 47 C.F.R. § 1.2111.

coverage to twelve counties in the Des Moines, IA market; and offer its broadband EVDO service in the relevant markets and (ii) enabling T-Mobile to enhance its existing voice and broadband GPRS service in the Baltimore, MD market. The changes achieved through the instant assignments will enable enhanced competition and/or the provision of innovative, high quality services.⁵

Spectrum Aggregation/Competition Analysis

Attached hereto as **Exhibit 2** is a list depicting Cellco's and the VoiceStream Parties' current spectrum holdings in each of the subject BTAs both before and after the subject transaction. As **Exhibit 2** demonstrates, the instant assignments will result in the Parties holding amounts of spectrum in each market at or below the levels permitted under the former spectrum cap rules.⁶ The VoiceStream Parties will hold 30 MHz in the Baltimore market. Cellco will hold no more than 35 MHz in the Des Moines, Myrtle Beach and Nashville markets.

Moreover, the instant assignments will not reduce competition in the applicable market areas. Cellco will remain a competitor in the Baltimore market. VoiceStream is not currently providing commercial service in Myrtle Beach, SC. Therefore, the number of active competitors in each market will not be reduced. In fact, Cellco will be a new competitor in part of the Des Moines, IA BTA. Finally, as requested by Commission staff, attached hereto as **Exhibit 3** is a chart depicting the number and identity of the various terrestrial-based wireless competitors operating in each BTA subject to the instant transaction. As **Exhibit 3** demonstrates, each of these markets is already served by a large number of competitors.

⁵ See *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993; Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Notice of Inquiry, 17 FCC Rcd 24923 (2002) (citing predictions of industry analysts); see also *VoiceStream Wireless Corporation, Powertel, Inc., Transferors, and Deutsche Telekom AG, Transferee*, 16 FCC Rcd 9779, 9844-45 (2001) ("VoiceStream-DT Order"); *So. New England Telecommunications Corp. to SBC Comm.*, 13 FCC Rcd 21292, 21314-15 (1998); *Comcast Cellular Holdings Co. and SBC Comm., Inc.*, 14 FCC Rcd 10604 (WTB 1999); *Vanguard Cellular Systems, Inc. and Winston, Inc.*, 14 FCC Rcd 3844, 3853 (WTB 1999); *360° Communications Co. and ALLTEL Corp.*, 14 FCC Rcd 2005, 2025-26 (WTB 1998); *Bell Atlantic Mobile Systems, Inc. and NYNEX Mobile Comm. Co. Application For Transfer of Control of Eighty-two Cellular Radio Licenses to Cellco Partnership*, 10 FCC Rcd 13368, 13383-85 (WTB 1995), *aff'd*, 12 FCC Rcd 22280 (1997).

⁶ See *2000 Biennial Regulatory Review of Spectrum Aggregation Limits for Commercial Mobile Radio Services*, 16 FCC Rcd 22,668 (2001).

Foreign Ownership of VoiceStream

Under Section 310(b)(4) of the Act, the Commission must determine whether the public interest would be served by allowing a common carrier licensee to have indirect foreign ownership that exceeds 25 percent.⁷ Through T-Mobile, foreign entities and persons indirectly hold 100 percent of the attributable ownership interest in the VoiceStream Parties. On April 27, 2001, the Commission issued an order granting the applications of T-Mobile (then named VoiceStream Wireless Corporation (“VoiceStream”)) for authority to transfer control of its licensee subsidiaries to a wholly owned U.S. subsidiary of Deutsche Telekom AG (a German entity) (“DT”) to effect a merger between VoiceStream and DT.⁸ The Commission found that DT’s indirect investment in VoiceStream and its licensee subsidiaries, including the VoiceStream Parties, in excess of the 25 percent benchmark set forth in Section 310(b)(4), is consistent with the public interest.⁹ Specifically, the Commission authorized up to 100 percent indirect foreign investment in T-Mobile and its licensee subsidiaries, including the VoiceStream Parties, by DT and its German shareholders, and by the German government through its investment in DT (up to and including 43 percent).¹⁰ The Commission subsequently approved

⁷ See 47 U.S.C. § 310(b)(4).

⁸ See *VoiceStream-DT Order*, *supra* note 7. The transfer of control of T-Mobile to DT was consummated on May 31, 2001.

⁹ See *id.* at 9845. Since the consummation of the transfer of control of T-Mobile to DT on May 31, 2001, there has been no increase in the Federal Republic of Germany’s ownership interest in DT or, indirectly, in T-Mobile. DT continues to hold 100 percent of the ownership interests in T-Mobile (through DT’s wholly owned subsidiary, T-Mobile International Holding GmbH, which in turn holds all of the interests in T-Mobile International AG & Co. KG, which in turn holds all of the interests in T-Mobile Global Holding GmbH, which in turn holds all of the interests in T-Mobile) and, indirectly, a 100 percent interest in the VoiceStream Parties and a 100 percent interest in the other T-Mobile licensee subsidiaries.

¹⁰ Specifically, the *VoiceStream DT Order* provided that “the applications filed by VoiceStream and Powertel for authority to transfer control of licenses and authorizations to DT, and the petitions for declaratory ruling filed by VoiceStream and Powertel in the above-captioned proceeding ARE GRANTED.” *VoiceStream-DT Order*, 16 FCC Rcd at 9850. The transfer of control application filed by VoiceStream PCS (ULS File No. 0000211881) was among 31 electronic applications granted by the *VoiceStream DT Order* and referenced the Lead Application for the merger (ULS File No. 0000211827). The Application for Transfer of Control and Petition for Declaratory Ruling seeking a declaratory ruling for foreign ownership for “the applicants” was attached to the Lead Application. See *id.* at 9783 n.2. The VoiceStream PCS application was consummated by ULS File Nos. 0000478191. A transfer of control application for Cook Inlet/VS GSM II PCS, LLC (ULS File No. 0000217007) from Cook Inlet Region, Inc. to VoiceStream was consummated on December 14, 2000 (ULS File No. 0000299022). Cook Inlet/VS GSM II PCS, LLC filed an administrative update to change its name to VS II on January 30, 2001 (ULS File No. 0000351071). A pro forma application was filed to transfer control of VS II from VoiceStream to DT on January 30, 2002, and was

100 percent indirect foreign investment in several other T-Mobile licensee subsidiaries.¹¹ Because the Commission previously approved the ownership structure of the VoiceStream Parties, the acquisition of additional licenses by these entities is in the public interest and the VoiceStream Parties request that the Commission find that no new foreign ownership issues are raised by this filing and extend the previous Section 310(b)(4) authorizations to the licenses in this application.

Minority Foreign Ownership in Cellco

Vodafone's minority, indirect, non-controlling interest in Cellco, and its qualifications (as a foreign corporation) to hold indirect ownership interests in common carrier licensees, have been previously authorized by the Commission under Section 310(b)(4) of the Communications Act.¹² No subsequent changes have occurred in Cellco's foreign ownership. Neither Vodafone nor any of its foreign subsidiaries hold any direct ownership interests in any common carrier licenses. Accordingly, Cellco requests that the Commission find that no new foreign ownership issues are raised by this filing and extend the previous Section 310(b)(4) authorization to the licenses in this application.

Compliance with DOJ/FBI Agreement by VoiceStream

The VoiceStream Parties respectfully request that the Commission condition its grant of licenses to be assigned to the VoiceStream Parties (but not the licenses to be assigned to Cellco) on compliance with the provisions of the agreement between DT, the Department of Justice

granted on March 23, 2002 (ULS File No. 0000753334). Accordingly, each of the VoiceStream Parties has received a declaratory ruling authorizing the current level of indirect foreign investment by DT and its German shareholders.

¹¹ See, e.g., FCC Public Notice, *International Authorizations Granted*, 18 FCC Rcd 5014 (IB 2003) (granting indirect foreign ownership in Cook Inlet/VS GSM VI PCS, LLC in excess of the twenty-five percent benchmark of Section 310(b)(4)).

¹² See *Vodafone AirTouch Plc and Bell Atlantic Corp.*, 15 FCC Rcd 16507, 16514 (WTB/IB 2000); FCC Public Notice, *International Authorizations Granted*, 15 FCC Rcd 116 (IB 1999); *AirTouch Communications, Inc. and Vodafone Group, Plc.*, 14 FCC Rcd 9430, 9434 (WTB 1999).

VoiceStream PCS BTA I License Corporation
VoiceStream GSM II, LLC
Cellco Partnership D/B/A Verizon Wireless
FCC Form 603
Exhibit 1
Page 7 of 8

(“DOJ”) and the Federal Bureau of Investigation (“FBI”) (“DOJ/FBI Agreement”),¹³ upon which the approval of the merger between T-Mobile and DT was based.¹⁴ The requirements of the Agreement are binding upon DT and DT’s wholly-owned subsidiaries, including T-Mobile and the VoiceStream Parties. Section 7.2 of the Agreement provides:

DT agrees that in its applications or petitions to the FCC for licensing or other authority filed with the FCC after the Effective Date, except with respect to *pro forma* assignments or *pro forma* transfers of control, it shall request that the FCC condition the grant of such licensing or other authority on DT’s compliance with the terms of this Agreement¹⁵

¹³ See Agreement between Deutsche Telekom AG, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation, the Department of Justice and the Federal Bureau of Investigation (Jan. 12, 2001), which was appended by the Commission to the *VoiceStream-DT Order*.

¹⁴ See *VoiceStream-DT Order*, *supra* note 7.

¹⁵ DOJ/FBI Agreement § 7.2. The Commission has included compliance with the DOJ/FBI Agreement as a condition to the Commission’s consent in the context of every application for assignment or transfer of control of licenses to T-Mobile’s subsidiaries that has postdated the DOJ/FBI Agreement.

The DOJ/FBI Agreement prescribes specific language for the conditional grant of interests in FCC licenses at Exhibit A to the DOJ/FBI Agreement:

It is further ordered, that the authorizations and the licenses related thereto are subject to compliance with the provisions of the Agreement between Deutsche Telekom AG, VoiceStream Wireless Corporation, VoiceStream Wireless Holding Corporation on the one hand, and the Department of Justice (the "DOJ") and the Federal Bureau of Investigation (the "FBI") on the other, dated January 12, 2001, which is designed to address national security, law enforcement, and public safety issues of the FBI and the DOJ regarding the authority granted herein. Nothing in the Agreement is intended to limit any obligation imposed by Federal law or regulation including, but not limited to, 47 U.S.C. § 222(a) and (c)(1) and the FCC's implementing regulations.¹⁶

Conclusion

In view of the foregoing, the Parties respectfully submit that each assignee is qualified to obtain the license(s) referenced herein, and that Commission approval of the proposed assignment, as described herein, will serve the public interest, convenience and necessity. Accordingly, the Parties respectfully request that the Commission grant the instant application.

¹⁶ DOJ/FBI Agreement at Exhibit A.